ACLI
Financial Security for Life

November 28, 2023

Submitted via email: rule-comments@sec.gov

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Re: Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities; File No. S7–16–23; Release No. 33-11250; 34-98624; IC-35028

Dear Ms. Countryman:

On behalf of our members, the American Council of Life Insurers ("ACLI") submits these comments regarding the Securities and Exchange Commission's ("SEC" or "Commission") proposed new rule, Registration for Index-Linked Annuities ("RILAs"), and Amendments to Form N-4 for Index-Linked and Variable Annuities ("the Proposal"). We appreciate the Commission's engagement on this important issue for the life insurance industry and offer these comments for your consideration.

ACLI's member companies offer multiple registered products that contribute to Americans' retirement portfolios -- including indexed-linked, variable, and fixed annuities. ACLI was pleased with the passage of the Registration for Index-Linked Annuities Act ("the RILA Act"). We also support the Commissions' efforts in providing consumers with the information needed to make informed and knowledgeable decisions when considering annuities.

Our comments reflect the need to find a balance between accurate and informative consumer disclosure and overly burdensome regulatory requirements that may serve as barriers to the continued development and availability of competitive and innovative life and annuity products that offer Americans lifetime income and financial security. Overall, our members are very pleased with the Commission's proposal to move RILAs onto Form N-4. However, we want to offer suggestions that may assist with the Commission's development of disclosures that are effective and attentive to the needs of investors given the nature of our members' products. We believe our suggestions align with the goal of ensuring that a purchaser "receive[s] the information necessary to make

knowledgeable decisions" and that "key information is conveyed in terms that a purchaser is able to understand."[1]

Specifically, we recommend the following priority changes be made to the Proposal: (1) adjust the language and formatting of disclosures to limit investor confusion; (2) extend marketing rules that create consistency between RILAs and other annuities; (3) make Form N-4 the default registration form for new registered insurance products that would otherwise be required to file on Form S-1 or S-3 for lack of a custom-tailored registration form; and (4) to not modify the KIT Key Information Table (KIT) format or require restatement of information disclosed in Overview of the Contract and KIT.

While our letter focuses on these particular changes, the Proposal necessarily contains many detailed disclosure and filing requirements, and requests comment on a wide range of issues. All of these details are very important to our members. In that regard, other insurance industry groups are providing more detailed comments and suggestions on many of these issues. Although we are not addressing all of these issues here, ACLI fully supports and endorses the extensive comments submitted by the Committee of Annuity Insurers (CAI), as well as the comments submitted by the Insured Retirement Institute (IRI), on November 28, 2023, as they align with our interests. ACLI urges the Commission to address all of these comments.

1. Adjust the language and formatting of disclosures to limit investor confusion.

The Proposal suggests that RILAs are inherently complex products. However, RILA products have similar positive crediting features to existing unregistered Fixed Index Annuity products, which have been sold for years without any significant consumer confusion. While RILAs may function differently than the variable annuities already utilizing Form N-4, the risks relating to investor confusion and loss of capital are similar. The goal of the new RILA disclosures should be to provide education and clarity to investors, rather than to unnecessarily single out RILAs as uniquely or inherently riskier than other registered annuity options on the market today. As such, our comments on the disclosure elements of the Proposal request modifications designed to keep RILA disclosures consistent with existing variable annuity disclosures already present on Form N-4.

Further, several of the proposed new disclosures are not accurate and would result in investor confusion, as discussed more fully below.

a. Cap Rates are not Fees

The Proposal requires insurers to characterize cap and other index crediting rates as fees.[2] Referring to these index crediting rates as fees is factually inaccurate. Cap and other index crediting rates are only elements of a broader combination of features that make up individual crediting methods for Index-Linked contract options. The characterization of these factors as limiting gains is only true if you assume the possibility of credited interest based solely on Index

[1] RILA Act of 2022.

[2] "For Contracts that offer Index-Linked Options … precede the [Minimum and Maximum Annual Fee Table] with a prominent statement explaining that: (1) there is an implicit ongoing fee on Index-Linked Options by the Insurance Company limiting, through the use of a cap, participation rate, or some other rate or measure, the amount an investor can earn on an Index-Linked Option; (2) imposing this limit helps the Insurance Company make a profit on the Index-Linked Option; and (3) in return for accepting this limit on Index gains, an investor will receive some protection from Index losses." (Proposed Instruction 2(c)(i)(G) to Item 3. Key Information of Form N-4.)

performance. Unlike an investment in a variable annuity subaccount, investments in the Index-Linked Options on RILAs are not credited interest based on Index return alone. Instead, the cap and other index crediting rates, protection rates, specific indexes, and term lengths serve as the building blocks of the crediting method itself, defining for the investor how interest will be calculated and credited.

Even if one assumes that the characterization of cap and participation rates as limiting credited interest is accurate, this is not true in all scenarios or under all crediting methods. For example, on cap rate strategies, if index returns are positive but less than or equal to the cap rate there is no limitation on the index credit. For participation rates, while the investor may receive a set percentage of the index return, there is typically no limit on how high that credited interest can be at the end of the index term. There are also circumstances where the customer's credited interest will outperform the index return. This includes scenarios in which negative index return is protected by a buffer or floor protection rate, and the investor is credited zero interest instead of experiencing negative index return. There are also tiered participation index strategies where the customer will receive the index return or more in all scenarios, and dual directional strategies that credit positive interest even where index return is negative but falls within the stated buffer. Some issuers also provide "uncapped" cap rates, often administratively set at 999%, which do not serve to limit in any way the amount of credited interest an investor could realize.

Because of the variety of scenarios in which cap and other crediting rates would *not* serve to limit credited interest, but still provide for downside protection, the proposed disclosure indicating that an investor will receive downside protection from Index losses *in exchange for* accepting a limit on index gains is also factually inaccurate.

It should also be noted that investors have a historical expectation that "fees" refer to money paid in exchange for the services of an investment adviser or broker-dealer, surrender penalty, or a fixed price for a particular right or service. Investors understand fees to be money collected from them, however, in the context of RILAs, issuers typically collect no fees other than the surrender changes that often are a feature of RILAs. Conflating a perceived limit on credited interest with a fixed amount paid out of pocket or deducted from contract value, especially when compared to the variable annuity products sharing Form N-4, will serve to confuse investors and will not aid in their understanding of the product mechanics.

b. Loss of Principal and Interest Disclosure

The Proposal requires issuers to disclose that an investor could lose a "significant amount of money." This is inconsistent with the existing disclosure for variable annuity products filed on Form N-4, which requires a statement that "an investor can lose money by investing in the Contract." Because a RILA investor is at no greater risk to lose a more substantial amount of money than a variable annuity investor, we believe the proposed disclosure would disincentivize the purchase of RILAs over variable annuities while also failing to provide any meaningful understanding to the investor. If all performance variables were equal, a RILA investor has reduced risk for loss of investment compared to a variable annuity investor because RILAs have the added benefit of downside protection. Further, the term "significant" is subjective and varies in meaning. An investor may only lose a "significant" amount of money if they similarly invest what the investor considers a "significant" amount of money. The suitability, sophistication, and needs of investors are considered when offering such products. Rather than providing a statement that doesn't offer any

clarity to the investor, we recommend aligning this requirement to the existing Form N-4 disclosure and remove the word "significant."

Accordingly, ACLI does not support requiring an insurer to disclose in the Overview of the Contract that an investor could lose a significant amount of money if the index declines in value and prominent disclosure of the maximum amount of loss (as a percentage) an investor could experience from negative index performance.

c. Providing "Economic Trade-off" and Back-end Management Information

ACLI members are concerned about the questions that imply the Commission is considering required disclosure regarding the back-end management of RILAs. Specifically, question 48 requests feedback on other disclosure information that would provide an investor with an understanding of the "economic tradeoffs" of RILAs. In response to questions 48 through 55, ACLI refers to and endorses CAI's letter discussing "Insurance Company Costs to Support Index-Linked Options."

d. Relationship Between Cap Rates and Profitability

The Proposal requires registrants to include the statement, "In addition to the fees described above, we limit the amount you can earn on an Index-Linked Option. Imposing this limit helps us make a profit on the Index-Linked Option. In return for accepting this limit on Index gains, you will receive some protection from Index losses."

This required disclosure that the Commission offers is an oversimplification of an insurance company's business model. RILAs are intended to produce revenue for the insurer sufficient to cover the cost of doing business. In addition, the statement would provide investors with a false understanding about RILA profitability for the issuers. Life insurers utilize a variety of means to produce profit based on the product. An explanation of this process would not be helpful to an investor. Every registered securities product provides revenue for a company regardless of the expectation of profit. However, not every Form disclosure requires issuers to outline such information.

2. Extend marketing rules that create consistency between RILAs and other annuities.

By not extending Rule 482 to RILAs, the SEC perpetuates an inconsistency between variable annuities and RILAs as it relates to advertising requirements. In particular, the failure to amend Rule 482 to apply to RILAs necessitates the delivery of a RILA prospectus with all advertisements. The same is not true for variable annuities. In creating this disparity, the Commission would provide favorable treatment for variable annuities in comparison to RILAs. Use of performance data, or lack thereof, in RILA advertisements should not be a barrier to applying Rule 482 to RILAs. Our members request the Commission clarify why the distinction is required or extend the application of Rule 482 to RILAs.

If the Commission does not amend Rule 482 to include RILAs, then the Commission should amend Rule 433 under the Securities Act of 1933 to allow RILAs filed on Form N-4 to use "free writing prospectuses" without an additional prospectus delivery requirement. ACLI supports the statements made in the CAI letter on this point.

3. Make Form N-4 the default registration form for new registered insurance products that would otherwise be required to file on Form S-1 or S-3 for lack of a custom-tailored registration form.

For the same reason that RILAs are being relocated to a product-tailored registration form, we believe that other registered insurance products for which no custom-tailored registration form currently exists, should be permitted to use Form N-4 as the default registration form. Registered insurance products are ill-suited for registration on Forms S-1 or S-3, which include requirements for voluminous company-related disclosures pursuant to Regulation S-K, and extensive financial information that do not serve to aid in investor comprehension of the products. While the proposed amendments to Form N-4 are designed to specifically address RILA and variable annuity products, the lack of granular company financial disclosures on Form N-4 allows investors to focus on simplified and relevant product-level information. In the absence of custom-tailored registration forms, it is our position that investors would be better served by fitting new and innovative annuity and life insurance products onto Form N-4 than they are by the required use of Forms S-1 or S-3. Alternatively, the Commission could reach a similar goal by taking a non-enforcement position for annuity and life insurance products filed on Forms S-1 and S-3 where those companies omitted the Regulation S-K required company and financial disclosures, and permitting the use of SAP financial statements in lieu of GAAP financial statements under the same analysis permitted under the proposal for Form N-4 filers, without a requirement for inclusion of interim ("stub") financial statements for off-cycle filings. Allowing Form N-4 to be the default would give investors the ability to easily compare registered insurance products side by side when considering their investment options.

4. Do not modify the Key Information Table (KIT) format or require restatement of information disclosed in Overview of the Contract in the KIT.

Under the proposal, the Key Information Table (KIT) format would be modified in a way that does not help investors better understand the product. Instead, the proposed modifications would lead to investor confusion by creating a lack of uniformity and duplication. ACLI supports leaving the KIT format as it currently exists within the N-4 Form.

Specifically, the proposal would require issuers to modify the presentation of KIT disclosures to a question-and-answer ("Q&A") format. A Q&A format will necessarily result in more narrative responses, making it more difficult for consumers to compare products. The resulting lack of uniformity runs counter to the Commission's goals of simplicity and ease of comparison that underpinned the creation of the KIT to begin with.

Additionally, we do not support the deletion of the final sentence in Instruction C(3)(a) to Form N-4, which permitted a registrant to omit additional disclosures in the prospectus that repeat information disclosed in the Overview of the Contract or KIT sections. Requiring companies to provide the same information multiple times and in multiple ways will only serve to balloon the volume of prospectus disclosures and defeat the purpose of SEC Rule 498A, which is meant "to simplify and streamline disclosures for investors about variable annuities and variable life insurance contracts."[3]

[3] SEC Adopts Investor Disclosure Improvements for Variable Annuities and Variable Life Insurance Contracts, March 11, 2020, https://www.sec.gov/news/press-release/2020-57.

Conclusion

ACLI appreciates the opportunity to comment on this Proposal and would welcome any questions the Commission may have.

Sincerely,

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